

July 7, 1999
L-99-7

TO : James C. Boehner
Assistant to the Labor Member

FROM : Steven A. Bartholow
General Counsel

SUBJECT : Creditability of Service of Temporary Employees

This is in response to your request for advice as to the creditability of service under the Railroad Retirement Act performed by temporary employees for a covered railway labor organization.

Section 1(f)(1) of the Railroad Retirement Act (RRA) provides that the term Ayears of service@ means Athe number of years an employee shall have rendered service to one or more employers for compensation....@ The term Aemployee@ is defined by section 1(b) of the RRA to mean Aany individual in the service of one or more employers for compensation....@ Section 1(d)(1) of the Act provides that an individual is deemed to be in the service of an employer if:

- (i)(A) he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, or
- (B) he is rendering professional or technical services and is integrated into the staff of the employer, or (C) he is rendering, on the property used in the employer=s operations, personal services the rendition of which is integrated into the employer=s operations, and
- (ii) he renders such service for compensation....

Thus, service performed by an employee for a covered employer for compensation is generally covered under the Railroad Retirement Act. There is an exception provided in the case of certain service performed for local lodges or divisions of national railway labor organizations. Such service is only

creditable in the case of an employee of the local lodge or division if the employee had been employed previously by a rail carrier employer and if the compensation paid to the employee is at least \$25 monthly. These are the only exceptions provided by the RRA. There is no distinction between full time permanent employment and part time or temporary employment. Accordingly, if the service in question is to be performed by employees of a covered employer for compensation in excess of \$25 monthly and the service is performed for a railway labor employer other than a local lodge or division, the service will be creditable under the Railroad Retirement Act.

Service performed by an independent contractor (or an employee of an independent contractor) would be reportable as self employment under the Social Security Act. We would need additional information to determine whether the contemplated service might be that of an independent contractor rather than as an employee. However, if the service contemplated would be subject to the supervision and direction of the labor organization, it would not be considered service performed by an independent contractor.